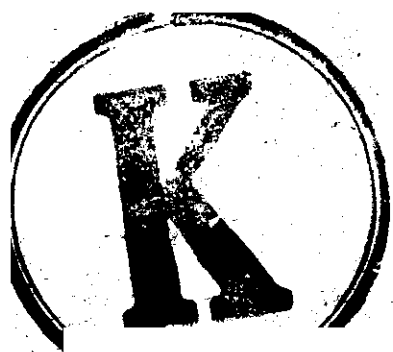




1947.

File No. O/ESTP/47.

G BRANCH

Subject:— Opinion on the cases
under the Essential Supplies
(Temporary Powers) Act, 1946.

CPH
(E2)

File No.

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C O N T E N T S .

Legal Department File No. O./E.S.T.P. / 47/

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Office of the R.L.A.

The Civil Supplies Commissioner considers that ready-made tea and coffee are foodstuffs within the meaning of clause (a)(1) of section 2 of the Essential Supplies (Temporary Powers) Act, 1946. H.M. (Civil Supplies) desires that the R.L.A. may give his opinion as the point is one of importance.

2. Under section 2 of the Essential Supplies (Temporary Powers) Act, 1946, "foodstuffs" is an essential commodity; and "foodstuffs" is later defined to include edible oil seeds and oils. By foodstuffs we mean anything used as food. The meaning to be attached to the word "food" would naturally depend upon the object of the Statute, and in most Statutes dealing with sale or adulteration of foods, "food" has been specially defined to include every article used for food or drink; see the (English) Sale of Food and Drugs Act, 1875, section 2, and Drugs Adulteration Act, 1928, section 34. Without any such special definition it would be difficult to include drinks in the term "food" and as was said in the case of *Emperor v. Ganapathy Iyer*, 26 Indian Cases, 311, there is nothing in the dictionaries which would support a contrary view. It is also interesting to note that in Schedule I to the Bombay Essential Commodities and Cattle (Control) Act, 1946, which is intended to cover such commodities as are not included in the essential commodities as defined in section 2 of the Essential Supplies (Temporary Powers) Act, 1946, milk is included as an essential commodity. Apart from the general legal practice of excluding drink from the scope of the term "food" one good reason has been assigned for not treating tea as food, which is based upon the accepted definition

of "food" as "what is eaten for nourishment to organic bodies; nutriment, aliment". In the case of *Sainsbury v. Saunders*, 1918, 88 Law Journal, King's Bench 441, Darling J. made the following remarks which are very pertinent to the point under consideration :-

"I desire to repeat it, that tea is not in itself a food in the sense that it is not nutritious, that you cannot live on it, that it will not increase the amount of tissue in a person as the drinking of milk would - food may be solid or liquid food - it is not simply because it is a drink that it is not a food; that is an entire mistake - supposing it were capable of adding to the tissues as milk will do, then it would be quite right to call it simply a food. It appears to be nothing in the world but a stimulant".

The remarks equally hold good of coffee.

3. On the whole, therefore, the proper view to take would be that ready-made tea and coffee are not foodstuffs within the meaning of clause (a)(i) of section 2 of the Essential Supplies (Temporary Powers) Act, 1946.

Sd/p.M.Lad
6-11

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U.R. to C.S.D No. 10696 , dated the 7th November 1947.

It appears that M/S R.B. Anant Shivaji Desai Topiwala have contravened on two occasions the C.S.D. notification No. 38/IV-E dated 22-11-1945 issued under sub-rule (2) of rule 81 of the Defence of India Rules providing for submission of stock declarations in respect of coal and coke. That notification of the Civil Supplies Department has been continued to be operative under the Essential Supplies (Temporary Powers) Act, 1946. Under section 2 of the Essential Supplies (Temporary Powers) Act, 1946, "coal" is mentioned as one of the essential commodities. In the opinion of the Police Prosecutor the term 'coal' in section 2 does not include "coke" and consequently the aforesaid notification of the Civil Supplies Department is no longer operative in so far as it relates to the declaration of stocks of coke. The R.L.S. is requested to advise whether the view taken by the Police Prosecutor is correct.

"Coal" is one of the essential commodities mentioned in section 2 of the Essential Supplies (Temporary Powers) Act, 1946. That a term has not been defined in the Act and if it be held that it does not include 'coke' the aforesaid notification of the Civil Supplies Department could be inoperative in so far as it relates to the declaration of stocks of coke. In "Fletcher Vs. Fields" (1891, 1 Queen's Bench, 780) the question raised was whether "coke" was not "coal" within the meaning of section 15 of the Metropolitan Streets Act, 1867 which prohibited the loading or unloading of 'coal' on or across the footway between certain hours, and imposed a penalty for so doing. It was argued for the accused thus;

"Coke is not coal, but is a residual product which is produced in the manufacture of gas from coal. In the various Acts in which the legislature deals with coke it is distinguished from coal and dealt with separately".

For the prosecution it was contended that in the dictionaries 'coke' is defined to be a variety of 'coal'. Consequently 'coke' is only 'coal' which has been treated in a

particular manner and hence was within the mischief aimed
ed by the Act. A.L.Smith, J. observed :-

"The Act imposes a prohibition upon the public as to two specified articles only, and imposes penalties. Why should we stretch the provisions of the Act so as to extend the prohibition and penalty to another article? I think that we are not at liberty to do so. It is admitted that cinders are not within the prohibition as to coal, and it seems to me that coke is no more coal than cinders are. I think we ought not to add a further prohibition to the absolute prohibition. as to two named articles, imposed upon the public by this section".

Agreeing with Smith J., Grantham, J. Observed that if the Legislature had intended to include, coke, it would have expressly said so; Coke is a manufactured article, and is not coal. It is interesting to add that the Colliery Control Order issued by the Government of India makes an express provision that "coal" includes "coke"

Orders issued in respect of coal under the Defence of India Rules and continued under the Essential Supplies (Temporary Powers) Act, 1946, have statutory force and a contravention of such order would be punishable. There is nothing in the Essential Supplies (Temporary Powers) Act. The aforesaid notification of the Civil Supplies Department is therefore 1946, itself to indicate that the term "coal" includes "Coke". Consequently, such orders as relate only to coal would be intra-vires of the Essential Supplies (Temporary Powers) Act. The aforesaid notification of the Civil Supplies Department is therefore vulnerable in so far as it relates to the declaration of stocks of coke, and it is doubtful whether the prosecution in the present case would succeed.

Government may decide whether the question of interpretation should be got settled by court by pursuing the prosecution especially as the Government of India was given legal advice contrary to the above view and notifications based upon that advice have so far been issued. Perhaps it may be politic to wait for the Court's decision and then to revise the notifications if the decision upholds the view now taken by me.

S^d. - P.M. Lad
13-12

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N.B. to C.S.D. No. G 1122, dated 15-12-47.